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[Report No. 91-873]

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 1969

Mr. ERVIN (for himself, Mr. BAYH, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of Virginia, Mr. CHURCH, Mr. COOK, Mr. COOPER, Mr. DODD, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRAVEL, Mr. GURNEY, Mr. HANSEN, Mr. HARTKE, Mr. HATFIELD, Mr. HRUSKA, Mr. INOUE, Mr. JORDAN of North Carolina, Mr. JORDAN of IDAHO, Mr. MCCARTHY, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MAGNUSON, Mr. MATHIAS, Mr. METCALF, Mr. MILLER, Mr. MONTOYA, Mr. MUNDT, Mr. MURPHY, Mr. MUSKIE, Mr. NELSON, Mr. PEARSON, Mr. PERCY, Mr. PROUTY, Mr. PROXMIRE, Mr. RANDOLPH, Mr. SAXBE, Mr. SCHWEIKER, Mr. SCOTT, Mr. SPARKMAN, Mr. SPONG, Mr. STEVENS, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. TYDINGS, Mr. WILLIAMS of New Jersey, and Mr. YARBOROUGH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 15, 1970

Reported by Mr. ERVIN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. It shall be unlawful for any officer of any

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1 executive department or any executive agency of the United
2 States Government, or for any person acting or purporting
3 to act under his authority, to do any of the following things:

4 (a) To require or request, or to attempt to require or
5 request, any civilian employee of the United States serving
6 in the department or agency, or any person seeking employ-
7 ment in the executive branch of the United States Govern-
8 ment, to disclose his race, religion, or national origin, or
9 the race, religion, or national origin of any of his fore-
10 bears: *Provided, however,* That nothing contained in this
11 subsection shall be construed to prohibit inquiry concerning
12 the citizenship of any such employee or person if his citizen-

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1 cerning any of his activities or undertakings unless such
2 activities or undertakings are related to the performance of
3 official duties to which he is or may be assigned in the
4 department or agency, or to the development of skills, knowl-
5 edge, or abilities which qualify him for the performance of
6 such duties, or unless there is reason to believe that the
7 civilian employee is engaged in outside activities or employ-
8 ment in conflict with his official duties.

9 (c) To require or request, or to attempt to require or
10 request, any civilian employee of the United States serving
11 in the department or agency, or any person applying for
12 employment as a civilian employee in the executive branch

1 *vided further, however,* That this determination shall be made
2 in individual cases and not pursuant to general practice or
3 regulation governing the examination of employees or appli-
4 cants according to grade, agency, or duties: *Provided further,*
5 *however,* That nothing contained in this subsection shall be
6 construed to prohibit an officer of the department or agency
7 from advising any civilian employee or applicant of a specific
8 charge of sexual misconduct made against that person, and
9 affording him an opportunity to refute the charge.

10 (f) To require or request, or attempt to require or
11 request, any civilian employee of the United States serving
12 in the department or agency, or any person applying for
13 employment as a civilian employee in the executive branch
14 of the United States Government, to take any polygraph
15 test designed to elicit from him information concerning his
16 personal relationship with any person connected with him
17 by blood or marriage, or concerning his religious beliefs or
18 practices, or concerning his attitude or conduct with respect
19 to sexual matters.

20 (g) To require or request, or to attempt to require
21 or request, any civilian employee of the United States serving
22 in the department or agency to support by personal endeavor
23 or contribution of money or any other thing of value the
24 nomination or the election of any person or group of persons
25 to public office in the Government of the United States or of

1 *vided further, however,* That this determination shall be made
2 in individual cases and not pursuant to general practice or
3 regulation governing the examination of employees or appli-
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5 *however,* That nothing contained in this subsection shall be
6 construed to prohibit an officer of the department or agency
7 from advising any civilian employee or applicant of a specific
8 charge of sexual misconduct made against that person, and
9 affording him an opportunity to refute the charge.

10 (f) To require or request, or attempt to require or
11 request, any civilian employee of the United States serving
12 in the department or agency, or any person applying for
13 employment as a civilian employee in the executive branch
14 of the United States Government, to take any polygraph
15 test designed to elicit from him information concerning his
16 personal relationship with any person connected with him
17 by blood or marriage, or concerning his religious beliefs or
18 practices, or concerning his attitude or conduct with respect
19 to sexual matters.

20 (g) To require or request, or to attempt to require
21 or request, any civilian employee of the United States serving
22 in the department or agency to support by personal endeavor
23 or contribution of money or any other thing of value the
24 nomination or the election of any person or group of persons
25 to public office in the Government of the United States or of

1 any State, district, Commonwealth, territory, or possession
2 of the United States, or to attend any meeting held to pro-
3 mote or support the activities or undertakings of any political
4 party of the United States or of any State, district, Common-
5 wealth, territory, or possession of the United States.

6 (h) To coerce or attempt to coerce any civilian
7 employee of the United States serving in the department or
8 agency to invest his earnings in bonds or other obligations
9 or securities issued by the United States or any of its depart-
10 ments or agencies, or to make donations to any institution
11 or cause of any kind: *Provided, however,* That nothing con-
12 tained in this subsection shall be construed to prohibit any
13 officer of any executive department or any executive agency
14 of the United States Government, or any person acting or
15 purporting to act under his authority, from calling meetings
16 and taking any action appropriate to afford any civilian em-
17 ployee of the United States the opportunity voluntarily to
18 invest his earnings in bonds or other obligations or securities
19 issued by the United States or any of its departments or
20 agencies, or voluntarily to make donations to any institution
21 or cause.

22 (i) To require or request, or to attempt to require
23 or request, any civilian employee of the United States
24 serving in the department or agency to disclose any items
25 of his property, income, or other assets, source of income,

1 or liabilities, or his personal or domestic expenditures or
2 those of any member of his family or household: *Provided*,
3 *however*, That this subsection shall not apply to any civilian
4 employee who has authority to make any final determination
5 with respect to the tax or other liability of any person, cor-
6 poration, or other legal entity to the United States, or
7 claims which require expenditure of moneys of the United
8 States: *Provided further, however*, That nothing contained
9 in this subsection shall prohibit the Department of the
10 Treasury or any other executive department or agency of
11 the United States Government from requiring any civilian
12 employee of the United States to make such reports as may
13 be necessary or appropriate for the determination of his
14 liability for taxes, tariffs, custom duties, or other obliga-
15 tions imposed by law.

16 (j) To require or request, or to attempt to require
17 or request, any civilian employee of the United States
18 embraced within the terms of the proviso in subsection
19 (i) to disclose any items of his property, income, or
20 other assets, source of income, or liabilities, or his personal
21 or domestic expenditures or those of any member of his
22 family or household other than specific items tending to
23 indicate a conflict of interest in respect to the perform-
24 ance of any of the official duties to which he is or may be
25 assigned.

1 (k) To require or request, or to attempt to require or
2 request, any civilian employee of the United States serving
3 in the department or agency, who is under investigation for
4 misconduct, to submit to interrogation which could lead to
5 disciplinary action without the presence of counsel or other
6 person of his choice, if he so requests: *Provided, however,*
7 *That a civilian employee of the United States serving in the*
8 *Central Intelligence Agency or the National Security Agency*
9 *may be accompanied only by a person of his choice who serves*
10 *in the agency in which the employee serves, or by counsel who*
11 *has been approved by the agency for access to the information*
12 *involved.*

13 (1) To discharge, discipline, demote, deny promotion
14 to, relocate, reassign, or otherwise discriminate in regard to
15 any term or condition of employment of any civilian em-
16 ployee of the United States serving in the department or
17 agency, or to threaten to commit any of such acts, by reason
18 of the refusal or failure of such employee to submit to or
19 comply with any requirement, request, or action made un-
20 lawful by this Act, or by reason of the exercise by such
21 civilian employee of any right granted or secured by this
22 Act.

23 SEC. 2. It shall be unlawful for any officer of the United
24 States Civil Service Commission, or for any person acting
25 or purporting to act under his authority, to do any of the
26 following things:

9)

1 (a) To require or request, or to attempt to require or
2 request, any executive department or any executive agency
3 of the United States Government, or any officer or employee
4 serving in such department or agency, to violate any of the
5 provisions of section 1 of this Act.

6 (b) To require or request, or to attempt to require or
7 request, any person seeking to establish civil service status
8 or eligibility for employment in the executive branch of the
9 United States Government, or any person applying for em-
10 ployment in the executive branch of the United States Gov-
11 ernment, or any civilian employee of the United States
12 serving in any department or agency of the United States
13 Government, to submit to any interrogation or examination
14 or to take any psychological test which is designed to elicit
15 from him information concerning his personal relationship
16 with any person connected with him by blood or marriage,
17 or concerning his religious beliefs or practices, or concerning
18 his attitude or conduct with respect to sexual matters: *Pro-*
19 *vided, however,* That nothing contained in this subsection
20 shall be construed to prevent a physician from eliciting such
21 information or authorizing such tests in the diagnosis or
22 treatment of any civilian employee or applicant where such
23 physician deems such information necessary to enable him
24 to determine whether or not such individual is suffering
25 from mental illness: *Provided further, however,* That this

1 determination shall be made in individual cases and not pur-
2 suant to general practice or regulation governing the exami-
3 nation of employees or applicants according to grade, agency,
4 or duties: *Provided further, however,* That nothing contained
5 in this subsection shall be construed to prohibit an officer of
6 the Civil Service Commission from advising any civilian
7 employee or applicant of a specific charge of sexual miscon-
8 duct made against that person, and affording him an oppor-
9 tunity to refute the charge.

10 (c) To require or request, or to attempt to require
11 or request, any person seeking to establish civil service
12 status or eligibility for employment in the executive branch
13 of the United States Government, or any person applying
14 for employment in the executive branch of the United States
15 Government, or any civilian employee of the United States
16 serving in any department or agency of the United States
17 Government, to take any polygraph test designed to elicit
18 from him information concerning his personal relationship
19 with any person connected with him by blood or marriage,
20 or concerning his religious beliefs or practices, or concerning
21 his attitude or conduct with respect to sexual matters.

22 SEC. 3. It shall be unlawful for any commissioned officer,
23 as defined in section 101 of title 10, United States Code, or
24 any member of the Armed Forces acting or purporting to
25 act under his authority, to require or request, or to attempt

1 to require or request, any civilian employee of the executive
2 branch of the United States Government under his authority
3 or subject to his supervision to perform any of the acts or
4 submit to any of the requirements made unlawful by section
5 1 of this Act.

6 SEC. 4. Whenever any officer of any executive depart-
7 ment or any executive agency of the United States Gov-
8 ernment, or any person acting or purporting to act under his
9 authority, or any commissioned officer as defined in section
10 101 of title 10, United States Code, or any member of the
11 Armed Forces acting or purporting to act under his author-
12 ity, violates or threatens to violate any of the provisions of
13 section 1, 2, or 3 of this Act, any civilian employee of the
14 United States serving in any department or agency of the
15 United States Government, or any person applying for
16 employment in the executive branch of the United States
17 Government, or any person seeking to establish civil service
18 status or eligibility for employment in the executive branch
19 of the United States Government, affected or aggrieved by
20 the violation or threatened violation, may bring a civil action
21 in his own behalf or in behalf of himself and others
22 similarly situated, against the offending officer or person in
23 the United States district court for the district in which the
24 violation occurs or is threatened, or the district in which the
25 offending officer or person is found, or in the United States

1 District Court for the District of Columbia, to prevent
2 the threatened violation or to obtain redress against the
3 consequences of the violation. The Attorney General shall
4 defend all officers or persons sued under this section
5 who acted pursuant to an order, regulation, or directive,
6 or who, in his opinion, did not willfully violate the
7 provisions of this Act. Such United States district court
8 shall have jurisdiction to try and determine such civil action
9 irrespective of the actuality or amount of pecuniary injury
10 done or threatened, and without regard to whether the
11 aggrieved party shall have exhausted any administrative
12 remedies that may be provided by law, and to issue such
13 restraining order, interlocutory injunction, permanent in-
14 junction, or mandatory injunction, or enter such other judg-
15 ment or decree as may be necessary or appropriate to prevent
16 the threatened violation, or to afford the plaintiff and others
17 similarly situated complete relief against the consequences of
18 the violation. With the written consent of any person
19 affected or aggrieved by a violation or threatened violation
20 of section 1, 2, or 3 of this Act, any employee organization
21 may bring such action on behalf of such person, or may
22 intervene in such action. For the purposes of this section,
23 employee organizations shall be construed to include any
24 brotherhood, council, federation, organization, union, or pro-
25 fessional association made up in whole or in part of civilian

1 employees of the United States and which has as one of its
2 purposes dealing with departments, agencies, commissions,
3 and independent agencies of the United States concerning
4 the condition and terms of employment of such employees.

5 SEC. 5. (a) There is hereby established a Board on
6 Employees' Rights (hereinafter referred to as the "Board").
7 The Board shall be composed of three members, appointed
8 by the President, by and with the advice and consent of the
9 Senate. The President shall designate one member as chair-
10 man. No more than two members of the Board may be of
11 the same political party. No member of the Board shall be
12 an officer or employee of the United States Government.

13 (b) The term of office of each member of the Board
14 shall be five years, except that (1) of those members first
15 appointed, one shall serve for five years, one for three years,
16 and one for one year, respectively, from the date of enact-
17 ment of this Act, and (2) any member appointed to fill
18 a vacancy occurring prior to the expiration of the term for
19 which his predecessor was appointed shall be appointed for
20 the remainder of such term.

21 (c) Members of the Board shall be compensated at the
22 rate of \$75 a day for each day spent in the work of the
23 Board, and shall be paid actual travel expenses and per
24 diem in lieu of subsistence expenses when away from their

1 usual places of residence, as authorized by section 5703 of
2 title 5, United States Code.

3 (d) Two members shall constitute a quorum for the
4 transaction of business.

5 (e) The Board may appoint and fix the compensation
6 of such officers, attorneys, and employees, and make such
7 expenditures, as may be necessary to carry out its functions.

8 (f) The Board shall make such rules and regulations
9 as shall be necessary and proper to carry out its functions.

10 (g) The Board shall have the authority and duty to
11 receive and investigate written complaints from or on be-
12 half of any person claiming to be affected or aggrieved by
13 any violation or threatened violation of this Act and to con-
14 duct a hearing on each such complaint. Within ten days
15 after the receipt of any such complaint, the Board shall
16 furnish notice of the time, place, and nature of the hearing
17 thereon to all interested parties. The Board shall render
18 its final decision with respect to any complaint within thirty
19 days after the conclusion of its hearing thereon.

20 (h) Officers or representatives of any Federal employee
21 organization in any degree concerned with employment of
22 the category in which any alleged violation of this Act
23 occurred or is threatened shall be given an opportunity to
24 participate in each hearing conducted under this section,
25 through submission of written data, views, or arguments,

1 and in the discretion of the Board, with opportunity for oral
2 presentation. Government employees called upon by any
3 party or by any Federal employee organization to participate
4 in any phase of any administrative or judicial proceeding
5 under this section shall be free to do so without incurring
6 travel cost or suffering loss in leave or pay; and all such em-
7 ployees shall be free from restraint, coercion, interference,
8 intimidation, or reprisal in or because of their participation.
9 Any periods of time spent by Government employees during
10 such participation shall be held and considered to be Federal
11 employment for all purposes.

12 (i) Insofar as consistent with the purposes of this sec-
13 tion, the provisions of subchapter II of chapter 5 of title 5,
14 United States Code, relating to the furnishing of notice and
15 manner of conducting agency hearings, shall be applicable
16 to hearings conducted by the Board under this section.

17 (j) If the Board shall determine after hearing that a
18 violation of this Act has not occurred or is not threatened,
19 the Board shall state its determination and notify all inter-
20 ested parties of such determination. Each such determina-
21 tion shall constitute a final decision of the Board for pur-
22 poses of judicial review.

23 (k) If the Board shall determine that any violation
24 of this Act has been committed or threatened by any civil-
25 ian officer or employee of the United States, the Board shall

1 immediately (1) issue and cause to be served on such of-
2 ficer or employee an order requiring such officer or employee
3 to cease and desist from the unlawful act or practice which
4 constitutes a violation, (2) endeavor to eliminate any such
5 unlawful act or practice by informal methods of conference,
6 conciliation, and persuasion, and (3) may—

7 (A) (i) in the case of the first offense by any
8 civilian officer or employee of the United States, other
9 than any officer appointed by the President, by and with
10 the advice and consent of the Senate, issue an official
11 reprimand against such officer or employee or order the
12 suspension without pay of such officer or employee from
13 the position or office held by him for a period of not to
14 exceed fifteen days, and (ii) in the case of a second
15 or subsequent offense by any such officer or employee,
16 order the suspension without pay of such officer or em-
17 ployee from the position or office held by him for a
18 period of not to exceed thirty days or order the removal
19 of such officer or employee from such position or office;
20 and

21 (B) in the case of any offense by any officer ap-
22 pointed by the President, by and with the advice and
23 consent of the Senate, transmit a report concerning such
24 violation to the President and the Congress.

25 (1) If the Board shall determine that any violation

1 of this Act has been committed or threatened by any officer
2 of any of the Armed Forces of the United States, or any
3 person purporting to act under authority conferred by such
4 officer, the Board shall (1) submit a report thereon to the
5 President, the Congress, and the Secretary of the military
6 department concerned, (2) endeavor to eliminate any un-
7 lawful act or practice which constitutes such a violation by
8 informal methods of conference, conciliation, and persuasion,
9 and (3) refer its determination and the record in the case
10 to any person authorized to convene general courts-martial
11 under section 822 (article 22) of title 10, United States
12 Code. Thereupon such person shall take immediate steps
13 to dispose of the matter under chapter 47 of title 10, United
14 States Code (Uniform Code of Military Justice).

15 (m) Any party aggrieved by any final determination
16 or order of the Board may institute, in the district court of
17 the United States for the judicial district wherein the viola-
18 tion or threatened violation of this Act occurred, or in the
19 United States District Court for the District of Columbia,
20 a civil action for the review of such determination or order.
21 In any such action, the court shall have jurisdiction to (1)
22 affirm, modify, or set aside any determination or order made
23 by the Board which is under review, or (2) require the
24 Board to make any determination or order which it is author-
25 ized to make under subsection (k), but which it has refused

1 to make. The reviewing court shall set aside any finding,
2 conclusion, determination, or order of the Board as to which
3 complaint is made which is unsupported by substantial evi-
4 dence on the record considered as a whole.

5 (n) The Board shall submit, not later than March 31
6 of each year, to the Senate and House of Representatives,
7 respectively, a report on its activities under this section dur-
8 ing the immediately preceding calendar year, including a
9 statement concerning the nature of all complaints filed with
10 it, its determinations and orders resulting from hearings
11 thereon, and the names of all officers or employees of the
12 United States with respect to whom any penalties have been
13 imposed under this section.

14 (o) There are authorized to be appropriated sums nec-
15 essary, not in excess of \$100,000, to carry out the provisions
16 of this section.

17 SEC. 6. Nothing contained in this Act shall be construed
18 to prohibit an officer of the Central Intelligence Agency or
19 of the National Security Agency ~~or of the Federal~~
20 ~~Bureau of Investigation~~ from requesting any civilian em-
21 ployee or applicant to take a polygraph test, or to take a
22 psychological test, designed to elicit from him information
23 concerning his personal relationship with any person con-
24 nected with him by blood or marriage, or concerning his
25 religious beliefs or practices, or concerning his attitude or

1 conduct with respect to sexual matters, or to provide a per-
2 sonal financial statement, if the Director of the Central
3 Intelligence Agency or his designee or the Director of the
4 National Security Agency or his designee ~~or the Director~~
5 ~~of the Federal Bureau of Investigation or his designee~~ makes
6 a personal finding with regard to each individual to be so
7 tested or examined that such test or information is required
8 to protect the national security.

9 SEC. 7. *No civilian employee of the United States serving*
10 *in the Central Intelligence Agency or the National Security*
11 *Agency, and no individual or organization acting in behalf*
12 *of such employee, shall be permitted to invoke the provisions*
13 *of sections 4 and 5 without first submitting a written com-*
14 *plaint to the agency concerned about the threatened or actual*
15 *violation of this Act and affording such agency one hundred*
16 *and twenty days from the date of such complaint to prevent*
17 *the threatened violation or to redress the actual violation:*
18 *Provided, however, That nothing in this Act shall be con-*
19 *strued to affect any existing authority of the Director of Cen-*
20 *tral Intelligence under section 403(c), of title 50, United*
21 *States Code, and any authorities available to the National*
22 *Security Agency under section 833 of title 50, United States*
23 *Code, to terminate the employment of any employee.*

24 SEC. 8. *Nothing in this Act shall be construed to affect*
25 *in any way the authority of the Directors of the Central*

1 *Intelligence Agency or the National Security Agency to pro-*
2 *tect or withhold information pursuant to statute or executive*
3 *order. The personal certification by the Director of the agency*
4 *that disclosure of any information is inconsistent with the*
5 *provision of any statute or executive order shall be conclusive*
6 *and no such information shall be admissible in evidence in*
7 *any interrogation under section 1(k) or in any civil action*
8 *under section 4 or in any proceeding or civil action under*
9 *section 5.*

10 *SEC. 9. This Act shall not be applicable to the Federal*
11 *Bureau of Investigation.*

12 *SEC. 7 10. Nothing contained in sections 4 and 5 shall*
13 *be construed to prevent establishment of department and*
14 *agency grievance procedures to enforce this Act, but the*
15 *existence of such procedures shall not preclude any applicant*
16 *or employee from pursuing the remedies established by this*
17 *Act or any other remedies provided by law: Provided,*
18 *however, That if under the procedures established, the em-*
19 *ployee or applicant has obtained complete protection against*
20 *threatened violations or complete redress for violations, such*
21 *action may be pleaded in bar in the United States district*
22 *court or in proceedings before the Board on Employee*
23 *Rights: And provided further, That if an employee elects*
24 *to seek a remedy under either section 4 or section 5, he*

1 waives his right to proceed by an independent action under
2 the remaining section.

3 SEC. 8 *11*. If any provision of this Act or the application
4 of any provision to any person or circumstance shall be held
5 invalid, the remainder of this Act or the application of such
6 provision to persons or circumstances other than those as to
7 which it is held invalid, shall not be affected.